

Federal Communications Commission

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DA 92-557

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

May 18 9 14 AM '92
Carmel Valley,
California

Channel No. Present Proposed
--- 290A

MM Docket No. 92-109

DISPATCHED BY

The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

In the Matter of

Amendment of Section 73.202(b), RM-7966
Table of Allotments,
FM Broadcast Stations.
(Carmel Valley, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 5, 1992; Released: May 15, 1992

Comment Date: July 6, 1992
Reply Comment Date: July 21, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it a petition for rule making filed by Eric R. Hilding on behalf of Joseph and Jan Miller ("petitioner") requesting the allotment of Channel 236A to Carmel Valley, California as that community's first local FM service.¹ Petitioner states that the allotment of Channel 236A to Carmel Valley would require a change of channels for the vacant but applied for allotment of Channel 238A at Carmel, California. Petitioner states that they will apply for the channel at Carmel Valley if allotted.

2. A Commission engineering analysis indicates that Channel 290A is available for use at Carmel Valley. The use of Channel 290A would eliminate the need for the amendment of applications at Carmel and would also permit the successful permittee of the allotment at Carmel Valley to operate at 6 kW.

3. We believe the public interest would be served by proposing the allotment of Channel 290A to Carmel Valley, California, as it would provide that community with its first local FM service. Channel 290A can be allotted to Carmel Valley in compliance with the minimum distance separation requirements with a site restriction 14.4 kilometers (8.9 miles) south.²

4. Accordingly we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Eric R. Hilding
P.O. Box 1700
Morgan Hill, CA 95038-1700
(consultant to petitioner)

Joseph C. Miller
Jan M. Miller
60 Boronda Lane #24
Monterey, CA 93940
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Elizabeth Beaty, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the

¹ This petition for rule making originally included proposals to allot channels to Carmel Valley, Hollister and Scotts Valley, California and to substitute channels at Hollister and Carmel. That petition was returned by staff letter as procedurally defective and therefore unacceptable for filing. Hilding filed a peti-

tion for reconsideration of the letter, which has been granted in a *Memorandum Opinion and Order* adopted simultaneously with this *Notice*, insofar as it reinstates the Carmel Valley proposal.

² The coordinates for Channel 290A at Carmel Valley are North Latitude 36-20-45 and West Longitude 121-42-30.

other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before

the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.